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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

DONALD E. EVERETT and CYNTHIA  
EVERETT, husband and wife,

Plaintiffs,

v.

TINA M. JOHNSON and JOHN DOE  
JOHNSON, wife and husband; UNITED  
STATES POSTAL SERVICE; and  
UNITED STATES OF AMERICA,

Defendants.

Case No: 2:11-cv-00317-FJM

**VOLUNTARY DISMISSAL  
WITHOUT PREJUDICE**

**(Federal Tort Claim)**

TO THE CLERK OF THE COURT:

Plaintiffs Donald and Cynthia Everett, by and through their attorneys undersigned and pursuant to Rule 41(a)(i), Federal Rules of Civil Procedure, hereby voluntarily dismiss this action without prejudice as to all Defendants because less than six months have elapsed from the date that the federal agency involved in this case received an administrative tort claim.

The United States Postal Service received the tort claim in this matter on or about January 2, 2011. Pursuant to 28 U.S.C. §2675(a), Plaintiffs needed to allow the agency six months from receipt of that claim to make a determination on the claim before suit

1 could be brought in District Court. If the agency denies the claim, Plaintiffs must file suit  
2 within six months after the date of mailing, by certified or registered mail, a notice of final  
3 denial of the claim by the agency. 28 U.S.C. §2401(b).

4 Undersigned counsel has been informed of these requirements by the United States  
5 Attorney's Office, which has indicated that it will move to dismiss the claim for the reasons  
6 set forth above unless the claim is voluntarily dismissed. In light of the fact that less than  
7 six months elapsed between the date the United States Postal Service received the claim  
8 and the filing of the lawsuit, Plaintiffs Everett hereby voluntarily dismiss their pending  
9 lawsuit, without prejudice, for the purpose of allowing the United States Postal Service the  
10 statutory time allowed to make a determination on their claim.

11 Plaintiffs certify that an Answer was not filed in this matter and, thus, this notice is  
12 appropriate under the applicable rule.

13  
14 RESPECTFULLY SUBMITTED this 19th day of May, 2011.

15 THE HERZOG LAW FIRM, P.C.

16 By /s/Michael Herzog  
17 Michael Herzog  
18 14350 N. 87<sup>th</sup> Street, Suite 180  
19 Scottsdale, Arizona 85260  
20 *Attorneys for Plaintiffs*

21 ORIGINAL of the foregoing electronically  
22 filed this 19<sup>th</sup> day of May, 2011, with:

23 Clerk of the Court

24 COPY of the foregoing mailed  
25 this 19<sup>th</sup> day of May, 2011, to:

26 Stuart Goldstein, Esq.  
27 LAW OFFICE OF STUART GOLDSTEIN  
28 2700 North Third Street, Suite 2010  
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*Attorneys for Plaintiff*

By /s/Lisa White